

## Part IV. Items of General Interest

### Archer MSAs

Announcement 2002-90

#### **PURPOSE**

Sections 220(i) and (j) of the Internal Revenue Code provide that if the number of Medical Savings Account (MSA) returns filed for 2001 or a statutorily specified projection of the number of MSA returns that will be filed for 2002 exceeds 750,000, then October 1, 2002, is a “cut-off” date for the Archer MSA pilot project. The Internal Revenue Service (IRS) has determined that the applicable number of MSA returns filed for 2001 is 21,079 and that the applicable number of MSA returns projected to be filed for 2002 is 59,151 (after reduction in each case for statutorily specified exclusions, such as the exclusion for previously uninsured taxpayers). Consequently, October 1, 2002, is not a “cut-off” date and 2002 is not a “cut-off” year for the Archer MSA pilot project.

#### **BACKGROUND**

The Health Insurance Portability and Accountability Act of 1996 added section 220 to the Code to permit eligible individuals to establish Archer MSAs under a pilot project effective January 1, 1997. The pilot project, as amended by The Job Creation and Worker Assistance Act of 2002 has a scheduled “cut-off” year of 2003, but may have an earlier “cut-off” year if the number of individuals who have established Archer MSAs exceeds certain numerical limitations. See sections 220(i) and (j).

If a year is a “cut-off” year, section 220(i)(1) generally provides that no individual will be eligible for a deduction or exclusion for Archer MSA contributions for any taxable year beginning after the “cut-off” year unless the individual (A) was an active MSA participant for any taxable year ending on or before the close of the “cut-off” year, or (B) first became an active MSA participant for a taxable year ending after the “cut-off” year by reason of coverage under a high deductible health plan of an MSA-participating employer.

Section 220(j)(2)(A) provides that the numerical limitation for 2002 is exceeded if the number of MSA returns filed on or before April 15, 2002, for taxable years ending with or within the 2001 calendar year, plus the Secretary’s estimate of the number of MSA returns for those taxable years which will be filed after April 15, 2002, exceeds 750,000. For this purpose, section 220(j)(2)(A) provides that a tax return is an MSA return for a taxable year if any exclusion is claimed under section 106(b) or any deduction is claimed under section 220 for that taxable year. Section 220(j)(2)(B) provides, as an alternative test, that the numerical limitation for 2002 is also exceeded if the sum of 90 percent of the MSA returns for 2001 plus the product of 2.5 and the

number of Archer MSAs for taxable years beginning in 2002 that are established during the portion of 2002 preceding July 1 (based on reports by Archer MSA trustees and custodians), exceeds 750,000.

Under section 220(j)(3), in determining whether any calendar year is a “cut-off” year, the Archer MSA of any previously uninsured individual is not taken into account. In addition, section 220(j)(4)(D) specifies that, to the extent practical, all Archer MSAs established by an individual are aggregated and two married individuals opening separate Archer MSAs are to be treated as having a single Archer MSA for purposes of determining the number of Archer MSAs.

A total of 61,802 tax returns reporting an excludable or deductible contribution to an Archer MSA for the 2001 taxable year were filed by April 15, 2002. Of this total, 49,653 taxpayers were reported as being previously uninsured. It has been estimated that an additional 17,111 tax returns reporting Archer MSA contributions for the 2001 taxable year have been or will be filed after April 15, 2002, including 8,181 taxpayers who were previously uninsured. Accordingly, it has been determined that there were 78,913 (61,802 plus 17,111) MSA returns for 2001. Of this total, 57,834 (49,653 plus 8,181) were for taxpayers reported as being previously uninsured. As a result, 21,079 (78,913 minus 57,834) MSA returns count toward the applicable statutory limitation for 2002 MSA returns of 750,000.

Based on the Forms 8851 filed on or before August 1, 2002 by Archer MSA trustees and custodians, it has been determined that 20,592 taxpayers who did not have Archer MSA contributions for 2001 established Archer MSAs for 2002 during the portion of 2002 preceding July 1. Of this total, 4,490 taxpayers were reported by trustees and custodians as previously uninsured, and therefore are not taken into account in determining whether 2002 is a “cut-off” year. In addition, 30 taxpayers were reported by trustees and custodians as excludable from the count because their spouse also established an Archer MSA. Accordingly, the applicable number of Archer MSAs established from January 1, 2002 through June 30, 2002, is 16,072 (20,592 minus (4,490 plus 30)). The alternative limitation for 2002 (90 percent of the applicable number of MSA returns for 2001 plus the product of 2.5 and the number of applicable Archer MSAs established from January 1, 2002 through June 30, 2002) is 59,151 (90 percent of 21,079 plus 2.5 times 16,072), which is less than the statutory limit of 750,000. Thus, 2002 is not a “cut-off” year for the Archer MSA pilot project by reason of either the 2001 MSA returns test of section 220(j)(2)(A) or the alternative test of section 220(j)(2)(B) of the Code.

Questions regarding this announcement may be directed to Shoshanna Chaiton in the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) at (202) 622-6080 (not a toll free number).